

**MINUTES
of the
FIRST MEETING
of the
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE**

**June 12, 2008
Santa Fe**

Present

Sen. Mary Jane M. Garcia, Co-Chair
Sen. Howie C. Morales
Rep. Danice Picraux
Sen. John C. Ryan
Rep. Gloria C. Vaughn

Absent

Rep. Gail Chasey, Co-Chair

Advisory Members

Rep. Ray Begaye
Sen. Joseph J. Carraro
Sen. Dede Feldman
Sen. John T.L. Grubescic
Sen. Linda M. Lopez
Rep. Teresa A. Zanetti

Sen. Rod Adair
Sen. James G. Taylor

Staff

Roxanne Knight
Michael Hely

Thursday, June 12

At 9:45 a.m., Senator Garcia called the meeting to order with a special subcommittee of voting and advisory members, including the co-chair, Representative Vaughn, Representative Begaye, Senator Feldman, Senator Grubescic and Representative Zanetti.

Senator Garcia introduced lead staff member Roxanne Knight and Michael Hely, staff attorney with the Legislative Council Service (LCS). Senator Garcia invited other members of the audience to introduce themselves, including Aaron Choneska, Tom Bunting and Alicia Santos, law student interns for the LCS.

Interim Legislative Committee Protocols

Raúl Burciaga and John Yaeger, assistant directors of the LCS, advised the committee of the interim committee protocols, including those relating to the establishment of a quorum for conducting committee business and for a subcommittee. A quorum, they explained, is achieved when 50 percent plus one of the committee's voting membership is present. In the case of the Tobacco Settlement Revenue Oversight Committee (TSROC), the number needed for a quorum is **four** members. Once established, a quorum is presumed to exist until the question of whether a quorum exists is raised by a voting member or a roll call vote is taken. A committee can act by

taking voice votes or by consensus — usually on non-controversial issues — even when a quorum is lacking. In those cases, the minutes will generally reflect that a motion was approved "without objection" or "with Senator or Representative ____ objecting".

In the absence of a quorum, in order to convene a meeting and out of consideration for those present, including legislators, the people testifying and the public, the rules allow a subcommittee to be formed. Subcommittees may be formed under the following circumstances:

1. all the members in attendance (voting, advisory and one-time attendees) equal the number required for a quorum (e.g., on the TSROC, when four legislators are present, including both voting and advisory members, then a subcommittee may be convened); or
2. the chair or vice chair is present along with one member from each of the chambers and each of the parties. For example, five members must be present: (co-) chair or vice chair, a house Democrat, a house Republican, a senate Democrat and a senate Republican. If the chair and vice chair are both present, the vice chair counts as a member of one of the houses/parties.

The New Mexico Legislative Council authorizes the speaker and senate president pro tempore to adjust the membership of the committees as necessary in consultation with the respective minority leaders. Staff can call leaders to temporarily appoint a member before the meeting gets started to facilitate the committee's business. The authorization would be for the purpose of establishing a quorum or in final meetings when votes are needed to adopt legislation. It is possible an advisory member might be changed to a voting member for this purpose. Also, it is possible that an interim committee could meet as a subcommittee throughout the summer.

Mr. Burciaga and Mr. Yaeger noted the following:

Voting. Only *voting* members may vote; advisory members may not vote without *prior* delegation by the speaker or president pro tempore. At roll call, only the names of voting members will be called.

Blocking Provision. This provision does *not* apply to the TSROC, but states that no action may be taken if a majority from *either* house opposes it. In order to ascertain the number needed to overcome this provision, each committee's numbers have to be examined (e.g., on the Legislative Education Study Committee, the number is six house members and four senate members).

The question was raised whether advisory members can be appointed as voting members when voting members are going to be absent. The speaker or president pro tempore may do so **prior to** the meeting, with some restrictions. For instance, this should not be done in a way such that the minority party has the vote "stacked" against it. When it appears that "stacking" is taking place, the party prejudiced by stacking (usually the minority party) can simply get up and leave, thereby destroying the quorum.

When LCS staff call members to remind them of an upcoming meeting, they will let members know that their attendance is needed for a quorum. It is not necessary that the chair or co-chair announce that a quorum has been achieved; staff merely note it in the minutes. Some actions for which a quorum is needed include roll call voting, approving minutes and starting a meeting.

It is not necessary that minutes be approved at any particular meeting; the committee can wait until the next meeting to approve the minutes when a quorum is present. As the LCS does not post minutes until they have been approved, staff tend to push for speedy approval of minutes. Unapproved minutes may be included in the final report, but they will be marked "unapproved".

The question was raised whether the web site posting only approved minutes is a new practice; it was suggested that this be revisited. It was noted that the committee trusts the staff to take accurate minutes, and the public should have them available.

Update on Tobacco-Related Funds, Programs, Taxes and Legislation

Nathan Bush, New Mexico government relations director for the American Cancer Society, and a representative from New Mexicans Concerned about Tobacco (NMCAT) gave an update of the most recent statistics relating to tobacco use and prevention. During a question and answer period, the following was noted.

- Mr. Bush did not know what percent of tobacco funds is taken out for administrative purposes before the distributions are made to the state, but said he would look into it.
- He informed the committee that the State Investment Council (SIC) is the administrator of the Tobacco Settlement Permanent Fund. The federal government is not directly involved in administering those funds.
- Master Settlement Agreement (MSA) payments are made by between 30 to 40 tobacco companies that meet with the National Association of Attorneys General. Checks are cut to the state treasury, which then transmits the money to the SIC (in April of each year). The SIC holds the money until June 30 of each year and then sends funds to the Department of Finance and Administration (DFA), which then sends the money to agencies for the period of April to June 30. This takes care of expenses already incurred by the state.
- Mr. Bush testified that half of the MSA funds received each year are disbursed from the Tobacco Settlement Permanent Fund to the Tobacco Settlement Program Fund.
- In terms of the effectiveness of dollars spent on tobacco use prevention programs, Mr. Bush testified that science indicates that adequate funding for smoking cessation/anti-smoking programs leads to a decrease in smoking. The Department of Health needs to produce the latest numbers.

- Mr. Bush testified that the exact turnaround time between infusion of MSA funds to programs and the decrease in smoking is not known, but the Department of Health's "Quit Line" (1-800-Quit Line [*sic*]) data are positive.
- Mr. Bush noted that MSA money is in fact going where it is supposed to go: New Mexico ranks fifteenth (fourth-highest) among states with tobacco control programs. The number keeps increasing and this is "paying off".
- It was noted that the manner in which the media depicts smoking is important and that there should be a rating system for movies according to the presence and degree of smoking behavior in a film. Smokers are re-appearing in movies, although there had been an overall reduction in the use of tobacco in films for quite some time.

Concern was expressed that the state is investing in films that might contain smokers and tobacco use. It was suggested that perhaps the New Mexico Film Commission should be requested to appear before the committee to discuss engaging filmmakers on this subject, since parts of the Indiana Jones film were filmed in New Mexico and it has smoking in it.

- The observation was made that although the Centers for Disease Control and Prevention (CDC) now recommend that New Mexico invest \$23.4 million into tobacco use prevention and control (TUPAC) programs, it is difficult to ascertain how this will be achieved when there were problems getting \$9 million for smoking cessation programs in FY09.

Mr. Bush testified that New Mexico has fallen to thirty-first in the nation in the amount of cigarette taxes it charges. He recommended that New Mexico increase its tobacco tax. He reported that research shows a corresponding decrease in smoking for every increase in cigarette taxes. According to Mr. Bush, research shows that with every 10 percent increase in cigarette price, there is a 79 percent decrease in youth who use tobacco. Mr. Bush further testified that, for every pack of cigarettes sold, the state pays \$14.00 in hidden costs, such as health and social costs to treat smoking-related illnesses.

Some key data presented include:

- 11 states have cigarette tax rates of \$2.00 or more per pack of cigarettes;
- 26 states have cigarette tax rates of \$1.00 per pack or more;
- 44 states, Washington, D.C., and Puerto Rico have increased their cigarette tax rates 80 times since 2002;
- New York has the highest rate of tax at \$2.75 per pack;

- *New Mexico's cigarette tax is \$0.91 per pack*; and
- annual cigarette tax revenue totals approximately \$60 million in New Mexico, or more than triple the revenue realized annually prior to the \$0.70 per pack tax increase of 2003.

A quorum was achieved by 10:45 a.m. and duly noted by committee staff.

A question was asked about internet sales and whether people will simply purchase tobacco on the internet if cigarettes are heavily taxed in stores. Mr. Bush indicated that he has seen model legislation to decrease the effect of internet sales available on the market. Mr. Bush did not know whether internet sales could be tracked as to their effects.

There was discussion regarding the Dee Johnson Clean Indoor Air Act (DJCIA), which went into effect on June 15, 2007; however, it does not apply to sovereign Native American tribes. NMCAT meets with law enforcement about how this legislation is being enforced. To date, there are no lawsuits known to have been filed. Mr. Bush reported that anecdotal evidence suggests that businesses have had an increase in customers due to the more pleasant environments. There were questions regarding cigar bars, which are exempt, including for use of cigarettes, from the DJCIA if they are compliant with rules. These rules seek to prevent businesses from suddenly switching their status to "cigar bars" to evade the DJCIA. It was suggested that perhaps cigar bars have been given an unfair advantage and should not be allowed this exemption. Private functions, including "smokers" (e.g., cigar parties), are allowed if they are in an isolated area where the public is not allowed. Any tobacco may be consumed in private.

The New Mexico Municipal League is working with local entities to enact stricter, more specific legislation regarding tobacco use in public. Twenty communities have such stricter laws, including, as of June 2008, Albuquerque.

Mr. Bush discussed NMCAT's concern with products obviously targeted at children, including tobacco with fruit flavors.

A question was raised about whether legislation might be passed to prohibit smoking in vehicles with children in them. Mr. Bush stated that some states have bans on this activity, which are generally only enforced if the driver is stopped pursuant to another offense. It was noted that the Department of Health is running ads discouraging this practice.

Partnerships in addressing tobacco use were noted between the rodeo community and the Department of Health, whereby no free samples of smokeless tobacco or sponsorships are allowed by the rodeo community. It was suggested that NMCAT partner with the New Mexico Activities Association.

There was a suggestion that perhaps stricter use of capital outlay money may be employed to prevent smoking at facilities that use capital outlay funds. Discussion ensued about the fact that the DJCIA already prohibits smoking in public buildings.

It was noted that the Navajo Nation has legislation to prohibit all tobacco use in public places. The Navajo Nation and the Southwest Tribal Tobacco Coalition have programs to teach the difference between the sacred use of tobacco and mass-produced tobacco products. It was noted that the Taos casino is the only one that is 100 percent smoke-free among those on Indian nations, pueblos and reservations.

2008 Committee-Sponsored and Related Legislation, FY09 Funding Levels and Historical Information

Update on tobacco-related funds, programs, taxes and legislation. Ms. Knight gave an update on tobacco-related funds, programs, taxes and legislation, 2008 committee-sponsored and related legislation, FY09 funding levels and historical information, which was also distributed as a handout. Ms. Knight discussed a bill draft adopted last year by the TSROC that clarified the authority of the Taxation and Revenue Department (TRD) to seize cigarettes as contraband; however, it was not introduced because the attorney general and the TRD arrived at an administrative solution.

Ms. Knight referred to her handout, which highlighted the differences between money received and appropriated. She noted that Project ECHO at the University of New Mexico Health Sciences Center gets money through the recurring operating budgets of the health sciences center and the Department of Health, even though it did not receive tobacco funding.

There was discussion of the appropriation of MSA funds. Original legislation established two funds, the Tobacco Settlement Permanent Fund and the Tobacco Settlement Program Fund. Tobacco revenues come to the Attorney General's Office, which deposits the payments with the state treasurer. One hundred percent is transferred to the "permanent fund" at the SIC. Fifty percent of that distribution is transferred to the "program fund" for allocation to the various agencies, whose appropriations are made in the general appropriation act. For fiscal years 2003-2006, 100 percent of the distributions to the "permanent fund" were transferred to the general fund. In fiscal year 2007, the 50/50 split was restored, and funds are no longer diverted to the general fund.

Questions will come up as a result of the master settlement enforcement litigation (MSEL), in which many states, including New Mexico, are currently defendants. New Mexico may have to use critical information on how this money was spent in order to defend itself in the MSEL. Ms. Knight noted her belief that, in 2003, most of the MSA funds went to the Human Services Department to fund Medicaid. This was after the Medicaid Reform Committee met. Although the distribution went into the general fund, the recommendations of the TSROC were funded in the state agencies via the general fund.

As for New Mexico's potential exposure to liability, the attorney general's staff will present to the committee on that subject at a later date.

Enforcement is an important aspect of the MSA. In the August meeting, the attorney general will discuss with the TSROC a likely need to increase funding for additional enforcement efforts, particularly with regard to internet sales.

The question was raised whether the TSROC would be dissolved, which would require legislation. Last year, when Senator Garcia and Representative Picraux presented to the Legislative Finance Committee (LFC), the LFC raised this question of dissolution. The LFC suggested that the TSROC be added as a subcommittee under the LFC; yet, it was noted, the TSROC is a statutory committee. Concerns were expressed over the future of the TSROC's support for the distribution of MSA funds to tobacco-related programs if such a committee restructuring were to occur.

A question was raised as to when the last audit of the Tobacco Settlement Permanent Fund was made. An audit is performed yearly by the SIC, and results are available on SIC's web site (see http://www.sic.state.nm.us/PDF%20files/FY07_SIC_Audit_Report.pdf). There was a \$14.9 million return on the SIC investment of MSA funds in fiscal year 2007. The market value of the Tobacco Settlement Permanent Fund on June 30, 2007 was \$116.7 million. The fiscal year 2008 audit will not be completed until the fall of 2008.

It was noted that programs receiving contracts through the Indian Affairs Department (IAD) for tobacco settlement program fund appropriations have had to respond to requests for proposals each fiscal year, rather than for multi-year awards. Ms. Knight noted that "special appropriations" are not typically considered "recurring" appropriations; however, in the case of the IAD, the appropriations are in the section of the general appropriation act that is considered typically to contain regular, recurring appropriations. She indicated that she would contact the IAD to confirm if it is now treating its appropriation as recurring, making it possible to issue multi-year contracts and improve the continuity of programming.

It was suggested that, as the Department of Health is reportedly getting great results from prevention efforts, the department should present to the TSROC in August 2008 regarding the net savings to the state.

When discussing whether New Mexico is appropriately spending tobacco money, it was noted that more health savings can be achieved when more funding is put into prevention and cessation programs, thus reducing the costs for treating tobacco-caused illnesses. Mr. Bush indicated that NMCAT is likely to resist further changes to the distributions that might decrease the dollars directed toward prevention and cessation efforts.

The committee adopted its work plan for submission to the New Mexico Legislative Council for final approval.

Public Comment and Adjournment

There being no public comment or further business, the committee adjourned at approximately 11:30 a.m.